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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,052	12/30/2003	Brian Alan Grove	2043.036US1	9104
49845 7590 07/02/2010 SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER GARG, YOGESH C				
ART UNIT 3625		PAPER NUMBER		
NOTIFICATION DATE 07/02/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM
request@slwip.com

Office Action Summary

Application No.

10/750,052

Applicant(s)

GROVE ET AL.

Examiner

Yogesh C. Garg

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 19, 20, 51, 55, 56, 87, 91, 92 and 116 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 19-20, 51, 55-56, 87, 91-92 and 116 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 2/17/2010 has been entered.
2. Claims 1-14, 16-18, 21-50, 52-54, 57-86, 88-90, 93-115, 117-131 are canceled. Claims 15, 51, 87, and 116 are currently amended. Claims 15, 19-20, 51, 55-56, 87, 91-92 and 116 are pending.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
 - 3.1. Claims 15, 51, 87, and 116 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishi (US PG-Pub 20020161691) in view of Borgeson et al. (YS 2003/0236739 A1), hereinafter Borgeson.

Regarding claim 15, Nishi discloses a network-based commerce system including a processor coupled to a memory through a bus (see Fig1, paragraphs 0001-0029 and 0068-0071. Nishi teaches an auction center equipment 6 including a computer 4 and the organizer equipment 12 including a computer 1 with which buyers using equipment 20 including computer 3 and sellers [assessors] using equipment 16 including computer 2 exchange data with each other via Internet 8 relating to bids, reserve prices and auctions. The computer 4 performing the center processing includes a processor coupled to a memory through a bus for storing computer programs) and an auction price-setting process executed from the memory by the processor to cause the processor to lower a reserve price associated with a listing of an item during a network-based auction price-setting process to an adjusted reserve price (see at least paragraphs 0088 and 0156-0174.). Nishi does not teach explicitly further to cause lower a proxy bid of a buyer to a predetermined amount below the adjusted reserve price when the proxy bid is higher than the adjusted reserve price. However, in the same field of endeavor, Borgeson teaches this limitation (see at least Abstract and paragraph 27. The system and process in Borgeson facilitates bidders to assign the central system as their bid proxies and to continuously adjust their bids based upon their bid position vis-à-vis the changing lead bid [corresponds to adjusted reserve price] in an auction). The teachings and disclosed art of Borgeson are analogous and pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, just like the applicant

claims that the processor adjusts a proxy bid that is lowers the proxy bid of a buyer to an amount below the adjusted reserved price when the proxy bid is higher than the adjusted bid price Borgeson provides a solution for a similar problem that the central system can adjust the buyer's proxy bid that is lower the proxy bid vis-à-vis the changing lead bid. Therefore, i view of Borgeson, it would be obvious to and within the objective reach of an ordinary skilled in the art to have modified Nishi to incorporate the features of Borgeson that is the central computer 4 can adjust a bidder's proxy bid that is by lowering the bid to match the lead bid or the adjusted reserve price.

Regarding claims 51, 87, and 116, their limitations are closely parallel to the limitations of claim 15 and are therefore analyzed and rejected on the basis of same rationale set forth for claim 15 above.

3.2. Claims 19-20, 55-56 and 91-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishi/Borgeson in view of Herschkorn (US Patent 6,691,094 B1).

Regarding claims 19-20, Nishi/Holden teaches all the limitations of claim 15, as analyzed above. Nishi/Borgeson does not disclose that the network-based commerce system of claim 15, wherein the auction price-setting process further causes the processor to automatically notify a seller of the item when a high proxy bid is within a predetermined percentage range of the adjusted reserve price or within a predetermined value range of the reserve price. Herschkorn, in the same field of endeavor of matching sellers and buyers fairly suggest and discloses this limitation (see

at least col.5, line 66-col.6, line 4, col.15, lines 56-67, col.24, lines 50-63, that is claims 9-10. Herschkorn teaches that the system/processor determines if the buyer's bid [corresponds to high proxy bid as recited in the claim] does not match with the seller's offer [corresponds to the seller's reserve price as recited in the claim] but is within a predetermined threshold, such as within 1-5 points or \$100,000 both the seller and buyer are notified. In view of Herschkorn, it would be obvious to one of an ordinary skilled in the art that while conducting auctions for large valued items to modify Nishi to incorporate Herschkorn features because when the system determines that the buyer's bids does not match or exceed the seller's reserve price but they are within a predetermined proximity of the seller's reserve price either in points/percentage or value and informs about it to both the seller and buyer then there is a possibility that buyer and seller could negotiate and close the deal.

Regarding claims 55-56 and 91-92, their limitations are closely parallel to the limitations of claims 19-20 and are therefore analyzed and rejected on the basis of same rationale set forth for claims 19-20 above

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on Increased Flex/Hoteling.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Yogesh C Garg
Primary Examiner
Art Unit 3625

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